IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 552 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATVARLAL G BABARIA

Versus

GOPAL OIL & JINNING INDUSTRIES

Appearance:

MR RN SHAH for Appellant

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 30/01/2003

ORAL JUDGEMENT

1. This First Appeal by the original plaintiff is directed against the judgment and decree dated 27th October, 1978 passed by the learned Civil Judge (S.D.),

Godhra in Special Civil Suit No.12 of 1973 whereby the learned Judge dismissed the said suit.

2. The plaintiff had filed the said suit against the respondent to recover Rs.28,000/- by way of damages with costs and interest. The plaintiff's case was that the defendant had agreed to sell five metre gauge wagon load (65 metric tons) of groundnut cakes to the plaintiff at the price of Rs.900/- per metric ton and that the defendant had failed to give delivery of the goods, as agreed and committed breach of the agreement. According to the plaintiff, he suffered damages to the extent of Rs.28,015/- at the rate of Rs.431/- per metric ton.

3. At the end of the trial, the learned Judge found that the plaintiff had proved that the defendant had agreed to sell the goods and that the defendant had failed to give delivery of the goods, as agreed and had committed breach of the agreement. However, the learned Trial Judge held that the plaintiff had failed to prove that they had suffered any loss, as pleaded by them. He, therefore, dismissed the suit.

4. The respondent, though served, has not entered appearance.

5. The learned counsel for the appellant took me through the judgment and the evidence on record. The learned Judge has discussed the issue of loss elaborately in paragraphs 42 to 52 of the judgment. He observed that it had come in evidence that there was day to day and sometimes even during the course of the day, fluctuation in market price of such goods. He, therefore, held that the market price prevailing on 4.1.73 or 5.1.73 cannot be relied upon for ascertaining the loss on 27.12.72, the day on which the defendant committed breach of the agreement. In the facts and circumstances of the case, the finding of the learned Judge that the plaintiff had failed to prove the loss is unassailable. The appeal, therefore, fails and is dismissed. No order as to costs.

(M.C. Patel, J.)

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